

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DAN ALAN VITALE**

Claimant

VS.

**LAWRENCE BATTERY COMPANY**

Respondent

AND

**AMERICAN HOME ASSURANCE CO.**

Insurance Carrier

Docket No. 1,001,126

**ORDER**

Respondent and its insurance carrier requests review of a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on May 10, 2002.

**ISSUES**

The Administrative Law Judge ordered respondent to provide medical treatment for the claimant with Dr. Wertzberger. The Administrative Law Judge found the claimant did suffer an accidental injury arising out of and in the course of employment and notice was given within 10 days.

Respondent denies claimant suffered an accidental injury arising out of and in the course of employment and further denies timely notice.

Claimant argues the Administrative Law Judge's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant described a gradual onset of back pain from lifting and moving batteries in the course of his employment. Finally, he was unable to get out of bed on November 13, 2001, and sought chiropractic treatment the next day. The chiropractor's

contemporaneous medical record of November 14, 2001, indicates claimant alleged he injured his back at work. The Board concludes claimant has met his burden of proof to establish he suffered a work-related accident on or about November 12, 2001. Moreover, as determined by the Administrative Law Judge, timely notice was provided the respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated May 10, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2002.

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BOARD MEMBER

c: Neil A. Dean, Attorney for Claimant  
Matthew S. Crowley, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director